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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: JUUL LABS, INC., MARKETING,
SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

Case No. 19-md-02913-WHO

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT AND
PROPOSED AGENDA**

This Document Relates to:

ALL ACTIONS

Pursuant to Civil Local Rule 16-10(d) and the Court’s November 20, 2020 Minute Order (ECF No. 1156), counsel for Defendants Juul Labs, Inc. (“JLI”), Altria,¹ Director Defendants,² E-Liquid Defendants,³ Retailer Defendants,⁴ and Distributor Defendants⁵ (collectively “Defendants”), and Plaintiffs’ Co-Lead Counsel (“Plaintiffs”) (collectively referred to herein as

¹ “Altria” refers to Altria Group, Inc., and the Altria-affiliated entities named in Plaintiffs’ Consolidated Class Action Complaint and Consolidated Master Complaint (collectively, “Complaints”), *see* ECF Nos. 387, 388.

² “Director Defendants” refers to Messrs. James Monsees, Adam Bowen, Nicholas Pritzker, Hoyoung Huh, and Riaz Valani.

³ “E-Liquid Defendants” refers to Mother Murphy’s Labs, Inc., Alternative Ingredients, Inc., Tobacco Technology, Inc., and Eliquitech, Inc.

⁴ “Retailer Defendants” refers to Chevron Corporation, Circle K Stores, Inc., Speedway LLC, 7-Eleven, Inc., Walmart, and Walgreen Co.

⁵ “Distributor Defendants” refers to McLane Company, Inc., Eby-Brown Company, LLC, and Core-Mark Holding Company, Inc.

the “Parties”) respectfully provide this Joint Case Management Statement in advance of the Further Case Management Conference scheduled for December 18, 2020.

I. PARTICIPANT INFORMATION

The conference will proceed via Zoom, and the Parties will not appear in person. Anyone who wishes to attend the conference must log in using the information available at: <https://www.cand.uscourts.gov/judges/orrick-william-h-who/>.

II. ISSUES TO BE DISCUSSED BELOW AND PROPOSED AGENDA

1. Status of Case Filings and Dismissals
2. Case Management Matters
3. Rule 26(f) Report
4. Discovery Status
5. ADR Status

III. STATUS OF CASE FILINGS AND DISMISSALS

As of December 16, 2020, 1459 cases are pending in this MDL, naming 83 defendants. A list of these defendants is attached as **Exhibit A**. To date, 1293 personal injury cases and 143 government entity cases (including 104 school districts, 19 counties, 1 city, and 19 tribes) have been filed in this MDL. 119 MDL plaintiffs have voluntarily dismissed their cases (114 personal injury plaintiffs, 1 government entity, and 4 class plaintiffs); 105 cases have been dismissed without prejudice pursuant to CMO No. 8; and 64 other cases are subject to pending motions to dismiss that have not yet been ruled upon.

There are 279 complaints pending in JCCP 5052, which is assigned to Judge Ann I. Jones of the Los Angeles Superior Court as the Coordination Trial Judge. There are 66 government entity cases, including 64 school districts and 214 personal injury cases brought on behalf of over 2400 individual personal injury plaintiffs. There are 16 defendants named in those JCCP cases.

The Parties are also aware of 15 cases filed by State Attorneys General specifically: California, Illinois, Hawaii, New York, North Carolina, Mississippi, Minnesota, Washington D.C., Arizona, Pennsylvania, New Mexico, Massachusetts, Colorado, Alaska and Washington.

1 Plaintiffs' Liaison Counsel continue their outreach to various State Attorneys General to discuss
2 cooperation with this MDL.

3 An update on matters of significance in (including hearings, schedules, deadlines,
4 depositions, substantive orders, and trial dates) in Related Actions as defined by the Joint
5 Coordination Order (CMO 9, ECF No. 572 at 1, 3) is attached hereto as **Exhibit B**.

6 **IV. CASE MANAGEMENT MATTERS**

7 **A. Personal Injury Actions**

8 **1. Bellwether Discovery Pool**

9 On December 15, 2020, pursuant the Court's (i) September 9, 2020 Order Regarding
10 Bellwether Selection and Case/Trial Schedule (ECF No. 938), (ii) November 9, 2020 Order
11 Regarding (1) *Lexecon* and Bellwether Selection for Personal Injury Cases and (2) Class
12 Representative Personal Injury Claims (ECF No. 1125); and (iii) November 20, 2020 Civil
13 Minutes (ECF No. 1156), the Parties filed a Joint Notice of the 12 cases that were selected
14 through a random-selection process and which will comprise the Court's 12 bellwether discovery
15 pool selections. (ECF No. 1188). The Parties' selections of 12 additional cases (6 each) will be
16 made on December 29, 2020. (ECF No. 1156).⁶ Plaintiffs have agreed with work with
17 Defendants to resolve any service issues among the eligible bellwether cases.

18 **Defendants' Position**

19 In its November 9, 2020 Order, the Court, over Defendants' objections, limited the
20 bellwether discovery pool to those cases that had designated the Northern District of California as
21 the trial forum, and gave Plaintiffs an opportunity to amend their complaints to change their
22 designated forum if they wished to do so. (ECF No. 1125.) Defendants' concerns about the
23 impact of that Order on the representativeness of the resulting bellwether pool have come to pass.

24 *First*, the forum limitation shaved off over 85% of the cases (895 out of 1042) that
25 otherwise may have been eligible for the bellwether discovery pool because they were filed in or
26

27 ⁶ Defendants reserve all objections to the selection process for the pool, including the alteration of
28 a selected forum through an amendment (rather than dismissal) process. Defendants also reserve
all rights as to cases selected for the bellwether discovery pool, including but not limited to
personal jurisdiction, subject matter jurisdiction, venue, and *Lexecon*.

transferred to the MDL by October 15, 2020 (ECF No. 938 at 2). *Second*, that only 147 cases in total selected this jurisdiction as the forum—even after the Court provided an opportunity to amend complaints to alter the designated forum (ECF No. 1125)—suggests that the overwhelming majority of plaintiffs may prefer having their cases tried before juries in their home jurisdiction.⁷ *Third*, the opportunity for a forum-selection redo has compromised the representativeness of the pool in other ways: (i) 36% of the overall pool alleges first JUUL use as adults, while only 23% of the abbreviated pool does; (ii) 27% of the larger pool alleges use of combustible cigarettes or other nicotine products before alleged first JUUL use, while only 16% of the truncated pool does; and (iii) 11% of the larger pool alleges addiction as the only claimed injury, but that number decreases to 3% of cases in the smaller pool.⁸

Defendants believe the constraints on the bellwether selection process—coupled with the nature of how these claims are pled—results in a bellwether pool that will not to provide reliable information necessary to facilitate the successful resolution of this MDL

Plaintiffs' Position

Plaintiffs do not join in Defendants' grievances regarding the bellwether selection process. Defendants' complaints that the pool is too small ring hollow. Having chosen to wield *Lexecon* as a sword to substantially limit the number of cases that could be tried in this forum to a mere 37, Defendants now take the incredible position that this Court's Order enlarging the pool by more than 100 cases somehow made the bellwether pool *less* representative. Defendants could have agreed to have the entire pool of cases that were filed be part of the potential bellwether pool if they only agreed to waive *Lexecon*. But their desire to prevent a trial in the very MDL jurisdiction they advocated for resulted in their counterproductive position. Plaintiffs disagree that the cited

⁷ Indeed, the selective amendments go in both directions. At least one Plaintiff, Lauren Beauvais, originally filed a short form complaint on October 14—one day before the Court's original bellwether deadline, in which she selected the Northern District of California as the venue she would have filed but for the absence of direct filing. *See* Case No. 3:20-cv-07148-WHO at ECF No. 1. After the Court's *Lexecon* order, however, Ms. Beauvais filed an "amended" complaint selecting the Northern District of Arizona as the district she would have filed absent direct filing and effectively opted **out** of the potential bellwether pool.

⁸ The skewed sample applies in other areas as well. For example, the Beasley Allen law firm represents less than 10% of plaintiffs in the larger pool, but their representation in the smaller pool is more than double that, at nearly 22% (and nearly 42% (5 out of 12) of the random selection picks are Beasley Allen cases.

1 data points—if accurate, and Plaintiffs have not had the opportunity to assess them—are
 2 determinative in driving resolution (i.e., which cases belong to which law firm). In any event, the
 3 Court’s process already adjusts for these concerns in making the final bellwether trial selections.
 4 Defendants will have the opportunity to submit six potential bellwether cases on December 29
 5 and can later advocate to the Court why they believe their selections are more appropriate for
 6 early trials.

7 **2. Motions To Dismiss With Prejudice**

8 On November 25, 2020, JLI moved to convert 95 dismissals without prejudice to
 9 dismissals with prejudice. (ECF No. 1167) The PSC filed a timely opposition,(ECF No. 1176),
 10 and JLI filed a timely reply on December 16, 2020 (ECF No. 1189). The Motion is scheduled for
 11 hearing on January 15, 2021.

12 **B. Government Entity Actions**

13 The parties have previously reached agreement and the Court has ordered (ECF No.
 14 1157) that the bellwether pool will consist of 12 government entities with a mix of counties and
 15 school districts, that the discovery, trial preparation, and trial deadlines and dates for the cases in
 16 the pool shall be sequenced in a manner agreed to by the Parties and approved by the Court, or as
 17 ordered by the Court, with the pool divided into at least two subgroups for which the dates and
 18 deadlines for discovery, trial preparation, and trial shall be separated by at least nine months, and
 19 that deadline for government entity plaintiffs to submit their Plaintiff Fact Sheets (“PFS”) was
 20 extended from November 16, 2020, to December 21, 2020. The defendants and plaintiffs shall
 21 each select 6 of the 12 government entity cases to be included in the bellwether pool and to
 22 submit their selections by January 20, 2021. (ECF No. 1157). The parties are continuing to meet
 23 and confer regarding the selection of specific trial bellwethers and the grouping of these
 24 bellwethers into two or more different waves. The parties are hopeful that they will either be able
 25 to reach agreement on a comprehensive proposal to present to the Court, or at minimum narrow
 26 the issues that the Court will need to resolve. The parties will either submit an agreed upon
 27 bellwether proposal, or competing proposals, to the Court by January 20, 2021.
 28

COVID-19 continues to impose significant burdens on counties and school districts. Nevertheless, Plaintiffs wish to advise the Court that they are making best efforts to complete the plaintiff fact sheets and anticipate having a significant number of fact sheets submitted by December 21st. Defendants note that they, too, are having to work under the constraints resulting from the COVID-19 pandemic, including in responding to discovery and preparing witnesses for depositions and defending those depositions. More to the point, however, Defendants need the information required to be disclosed in the government entity PFSs in order to make informed choices of government entity cases for inclusion in the bellwether pool. Thus, Defendants request that the Court set a deadline of January 4, 2021, by which date all bellwether-eligible government entity plaintiffs shall have submitted completed PFSs. Plaintiffs object to Defendants' proposal that government entities that do not have completed fact sheets on file by January 4, 2020¹ are ineligible for consideration as a bellwether. This request is directly contrary to the stipulation that Defendants agreed to just last month providing that: "While the government entity plaintiff in each such bellwether case shall use its best efforts to have its PFS served and filed on or before December 21, 2020, the absence of a completed fact sheet will not preclude an otherwise eligible government entity plaintiff from being put forward by a party for inclusion in the bellwether pool." ECF No. 1157 at 3. All of the Government Entity plaintiffs are working hard to meet the current December 21, 2020 deadline and anticipate that there will be a very substantial number completed by that deadline. Plaintiffs do not anticipate any problems with a timely and orderly bellwether selection process on the current timeline, but in the unlikely event that things were to change, the issue could be revisited at next month's Case Management Conference and any scheduling issues addressed at that time, which is before the January 20 deadline for bellwether selection. To be clear, Defendants do not seek to exclude any government entity cases from the bellwether pool that otherwise are eligible for inclusion. To the contrary, Defendants request only that the Court order government entity plaintiffs who do not meet the current deadline of December 21, 2020 for the submission of their PFSs to do so by January 4, 2021. What sanctions, if any, should be imposed for the failure of government entity plaintiffs to meet that deadline may be addressed another day, but for now, Defendants ask only that the government

entity plaintiffs be given a firm deadline that they must meet, particularly since they have previously been granted extensions of this deadline.

The existing case schedule also contains a deadline of December 22, 2020 (60 days from the entry of the Court's order on defendants' initial motions to dismiss) for filing amended government entity complaints. On November 12, 2020, Plaintiffs amended the seven government entity "briefing bellwether" complaints to revise their RICO claims and add additional factual allegations. These complaints were filed under seal, and Defendants are still in the process of determining whether any of new the material contained in these complaints needs to remain under seal. The parties have agreed to extend Defendants' deadline for doing so until January 11, 2020. Because this determination may reduce, if not eliminate, the need to file additional government entity amended complaints under seal, the Parties have agreed that the Plaintiffs do not need to file any amended government entity complaints on the public docket and can instead just serve them on the Defense counsel. The parties have also agreed to extend the deadline for serving such complaints from December 22, 2020 to December 29, 2020.

C. Scheduling Issues

1. Extension of Alternative Service

On April 22, 2020, due to the challenges presented by the COVID-19 pandemic, Plaintiffs filed a motion for alternative service, requesting an order from the Court deeming the personal service requirements set forth in Rule 45 of the Federal Rules of Civil Procedure satisfied by delivering subpoenas via certified mail until September 1, 2020. ECF No. 486. On May 1, 2020, the Court granted the requested relief. ECF No. 518. On September 21, 2020, at Plaintiffs' request and due to ongoing threat of COVID-19, the Court extended the effect of its Order to January 1, 2021.

Due to the continuing threat of COVID-19, Plaintiffs respectfully request a further extension of the Order temporarily suspending the Rule 45 requirements for service of process for subpoenas. Defendants do not oppose this request. A proposed order is attached as **Exhibit C**.

2. Scheduling And COVID-Issues

Plaintiffs' Position

1 Plaintiffs continue to strive to work collaboratively with Defendants to find ways to
2 alleviate the burden on everyone during this difficult time—counsel, clients, the Court, and all
3 those who support these efforts—while keeping this litigation moving with all due speed. To this
4 end, we negotiated the Remote Deposition Protocol, reached agreements regarding alternative
5 service, and whenever appropriate, have agreed to extend deadlines. Most recently, to
6 accommodate JLI's concerns about needing additional time to prepare its witness remotely,
7 Plaintiffs agreed to postpone the deposition scheduled for December 17 until January. At the
8 December 11 Discovery Conference, JLI indicated that certain witnesses scheduled for deposition
9 in January may require accommodations (in part because they have to sit for depositions in other
10 cases) and asked that Plaintiffs agree to push those dates out two to three weeks. At the
11 Conference, Plaintiffs agreed to work with Defendants on the specifics of those accommodations
12 and to work through a mutually agreeable schedule. Plaintiffs have asked Defendants to provide
13 a list of the witnesses they would like to reschedule and alternative dates. Defendants have not
14 responded to these requests, instead choosing to push for a wholesale delay in the entire case
15 schedule, which Plaintiffs do not agree is warranted at this time.

16 Plaintiffs remain open to accommodating Defendants, but only if adjusting the schedule
17 will be fair to both sides and will get depositions moving in this MDL (just as they are proceeding
18 in many other coordinated proceedings, including in California). For example, Plaintiffs ask that
19 custodial files be produced 30 days before the originally scheduled dates, so our review and
20 preparation can proceed apace. Mindful of the discovery cut-off, Plaintiffs have been attempting
21 to set deposition dates since the end of August. JLI had resisted for months and did not set any
22 dates until after Judge Corley ordered them to do so. Postponing nearly all the depositions—and
23 all the custodial file productions—into the late winter, early spring will jam and unfairly prejudice
24 Plaintiffs. Further, leaving open the question of whether scheduled depositions will move forward
25 in the next eight weeks would require Plaintiffs to continuously prepare for deposing witnesses
26 over the holidays, only to have Defendants reschedule in piecemeal fashion. Plaintiffs ask the
27 Court to facilitate any changes to the deposition schedule in a way that reasonably accommodates
28

1 both sides and provides certainty in the near term, while maintaining the current case schedule
2 that is in place absent an agreement of the parties or showing of good cause.

3 **Defendants' Position**

4 The COVID pandemic unfortunately continues to rage. The first distributions of the
5 vaccine are promising, but the effects of this national health emergency on *all parties* to this
6 litigation (as well as the numerous non-parties who have been or will be subpoenaed for
7 document production and deposition) show no sign of abating within the next several
8 months. Circumstances have deteriorated since the Court entered its September 9, 2020
9 Scheduling Order, and they seem likely to get worse in the near term before they get better. As
10 Judge Corley observed, "these are tough times;" "the schedule is important, but it's not the most
11 important." "Everything just takes longer and just seems so much harder right
12 now." (12/11/2020 Hr'g Tr. at 17-18.) These challenges have had particularly significant
13 impacts on the parties here. Most of JLI's witnesses are again subject to lockdown conditions in
14 San Francisco, and many of the plaintiffs are school districts and governmental entities who are
15 facing a host of challenges of their own.

16 For example, in the last 48 hours alone, plaintiffs have requested significant extensions for
17 submitting government entity fact sheets in light of the COVID emergency. In one case,
18 plaintiffs requested an extension because the school superintendent contracted COVID-19 and
19 could not complete the fact sheet on time. Plaintiffs have also asked for extensions of their
20 deadline to file amended complaints, complete personal injury fact sheets, among
21 others. Defendants have not hesitated to agree to those requested extensions, but the June 18,
22 2021 fact discovery cutoff is a looming issue given that fact discovery has not yet even begun
23 from the government entity plaintiffs (or any of the plaintiffs for that matter).

24 In the meantime, Plaintiffs have identified about 40 current or former employees of JLI
25 or Altria and certain third parties who they intend to depose, and Plaintiffs have not yet provided
26 a number of how many additional fact depositions they will pursue. While coordinating and
27 completing that many depositions amidst the challenges of COVID would be difficult before even
28 the June 18, 2021 fact discovery cutoff, Plaintiffs have demanded that JLI produce witnesses on

1 five separate 30(b)6) notices and many other individual witnesses before Plaintiffs' class
2 certification motion is due on March 17, 2021. As a result, despite the challenges of COVID,
3 Plaintiffs have in effect asked to *shorten* an already aggressive schedule by three months while
4 pursuing discovery well beyond the standard limits of the Federal Rules.

5 To address Plaintiffs' request for depositions before their class motion is due, JLI
6 proposed that the parties agree (and submit to the Court for consideration) to extend current
7 deadlines by 120 days or some other reasonable period of time (e.g., 90 days). This would allow
8 additional time to complete the extensive discovery Plaintiffs seek before filing their class
9 motion, which would be due this summer instead of March. It would also allow additional time
10 to schedule depositions of witnesses who will or may be deposed in one or more of the other
11 cases pending against JLI and Altria outside this MDL. Plaintiffs declined to discuss changes to
12 the schedule and offered only to adjust certain proposed deposition dates by a week or two.

13 Contrary to Plaintiffs' assertion, Defendants have not ignored Plaintiffs' offer, which was
14 made only yesterday. Defendants have been conferring with clients and witnesses regarding
15 which depositions may need to be rescheduled and will notify Plaintiffs as soon as practicable.
16 More broadly, however, Defendants respectfully submit that Plaintiffs' offer to reschedule a few
17 depositions by a week or two is not adequate given the circumstances of this case and COVID-19.
18 Defendants look forward to continuing dialogues with Plaintiffs on these issues. If the parties
19 cannot resolve their concerns, Defendants may need to seek relief from the Court and Judge
20 Corley, as appropriate.

21 **D. Amendment to CMO-5**

22 To facilitate the efficient management of reviewing compensable time spent by Plaintiffs'
23 counsel working on this litigation, Plaintiffs' request that the Court adopt an amended monthly
24 time report form. The proposed amendment adds a column to track leadership authorization of
25 tasks and expenses. Plaintiffs will submit a proposed order with the amendment on or before
26 December 18, 2020.

1 **E. Amended Protective Order**

2 The parties are working to finalize an amended protective order governing the production
3 of confidential information in these proceedings. The parties will submit a stipulation by
4 December 18 or raise any disputes with the Court at the Conference.

5 **V. 26(F) REPORT**

6 Plaintiffs and Defendants continue Rule 26 discussions. The parties had several meet-
7 and-confer sessions and offer the following report:

8 **A. Initial Disclosures**

9 Plaintiffs and Defendants are continuing to meet and confer regarding supplementing
10 certain Defendants' Initial Disclosures with the production of insurance policy documents, to the
11 extent applicable, and the Parties continue to discuss the timing and Plaintiffs' Initial Disclosure
12 Requirements.

13 **B. Changes to Default Discovery Limits**

14 The Parties continue to confer regarding changing the default discovery limits to
15 accommodate the scale and complexity of the litigation.

16 **VI. DISCOVERY STATUS**

17 **A. MDL Discovery**

18 On December 11, 2020, the Parties participated in a discovery conference with Judge
19 Corley. A copy of the December 9, 2020 Joint Discovery Status Report provided in advance of
20 that conference is attached as **Exhibit D**. In addition, on December 9, Plaintiffs notified JLI that
21 they intend to depose 15 additional fact witnesses. And today, JLI filed a letter regarding the
22 withdrawal of certain public records requests addressed at the December 11th conference. (ECF
23 No. 1190).

24 **B. Coordination with JCCP on Discovery**

25 The MDL Plaintiffs are holding weekly calls with JCCP counsel regarding discovery
26 coordination. Defendants appreciate and encourage coordination between the MDL and the JCCP,
27 as detailed by the Joint Coordination Order (CMO No. 9, ECF No. 572) and the Deposition
28 Protocol (CMO No. 10, ECF No. 573).

VII. ADR STATUS

Pursuant to Civil Local Rule 16-10(d), the Parties report that they continue to confer with Settlement Master Thomas J. Perrelli and cooperate with his recommendations.

Dated: December 16, 2020

Respectfully submitted,

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